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## **A CONSTITUTION FOR THE RUSSIAN FEDERATION**

**May, 1993**

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Working Paper No. 51**

This publication was made possible through support provided by the U.S. Agency for International Development, under Cooperative Agreement No. DHR-0015-A-00-0031-00.

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**IRIS Summary    Working Paper #51**  
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Peter C. Ordeshook and Thomas Schwartz, June, 1993

The draft constitution prepared for the Russian Federation can, in many respects, be regarded as a generic presidential constitution for a federation. It summarizes much of what we have learned about due process, the rule of law, the relationship between legislative and executive powers, and stable federalisms.

Section I (Articles 1-6) converts the Russian's penchant for a "constitution within a constitution" and statements of general principles into a specification of the meaning of the rule of law and a crisp review of the meaning of democratic stability. Section II is the constitution's bill of rights. Two articles in this section warrant special notice. Article 12 summarizes two hundred years of experience in trying to understand how to balance basic inalienable rights against the necessity for regulating the exercise of those rights by the sovereign, the people. Article 9 encapsulates a similar experience with the foundations of private property and competitive markets. Section III consists of a single article 13. This article converts the usual socialist guarantees (housing, medical care, pensions, protection against unemployment, and so on) into a court-enforceable limitation on state power, which is after all one of the fundamental purposes of a constitution. Section IV makes provision for a symmetric and balanced federalism that would allow the Russian Federation to incorporate those features of its Federal Treaties dealing with its Republics, Autonomous Oblasts and Autonomous Okrugs into its constitutional structure. Sections V-VII contain the usual provisions for a separation of powers system in which we give the president only one special power to resolve potential executive-legislative deadlock -- the strong power of legislative initiative.

An earlier version of this constitution was published in Russian (*Business World*, March 20, 1993), but we cannot say that it has directly influenced the preparation of any official draft constitution for the Russian Federation. On the other hand, it has been widely read by various specialists and has had some influence on their thinking.

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## A CONSTITUTION FOR THE RUSSIAN FEDERATION

### PREAMBLE

*We, the multinational people of the Russian Federation, to secure the peace and safety of society, to establish the legal foundations for general prosperity, to foster justice and harmony among all of us, to protect the freedom and dignity of each one of us, and to preserve the unity and patrimony of Russia, adopt this Constitution and proclaim the Russian Federation to be a democratic, federal, and social republic based on the constitutional rule of law, the inalienable rights of the individual, and the separation of legislative, executive, and judicial powers.*

### I: CONSTITUTIONAL PRINCIPLES

*Article 1:* The citizens of the Russian Federation are the sovereign masters of their government. Their sovereignty is protected by their freedom to advocate and criticize decisions of state, to choose and change those public officials who bear ultimate legislative and executive responsibilities, and to communicate and associate with one another for these purposes.

*Article 2:* The RF is a federation of its Republics, Oblasts, Krays, Autonomous Oblasts, Autonomous Okrugs, and the cities of St Petersburg and Moscow. The autonomy and equality of these Federal Subjects are protected by their constitutional prerogatives and mutual obligations, by their equal representation in the Senate of the RF, and by the special powers possessed by the Senate.

*Article 3:* The government of the RF consists of legislative, executive, and judicial branches, none superior or subordinate to the others, and none empowered to govern alone. The equality and mutual dependence of these branches are protected by their possession of distinct powers, by the absence from any branch of officers who serve in or at the pleasure of another branch, and by the different ways in which they are held responsible by citizens.

*Article 4:* The state shall never act except as authorized by federal law or this Constitution or by the law or constitution of some Federal Subject. Federal laws and the laws and constitutions of federal subjects shall be consistent with this Constitution. This Constitution

and federal laws are supreme and binding throughout the territory of the RF. The constitutional rule of law is protected by the separation of legislative, executive, and judicial powers.

*Article 5:* No act of state in the territory of the RF shall violate any right possessed by all persons, respected in civilized societies, or enumerated in this Constitution. No act of state creates these rights, which limit the power of the state to act at all. These rights are protected by the division of governing authority among the various officers, branches, organs, and levels of government in the RF. Final judgement as to whether the state has violated any of these rights is rendered by the Constitutional Court of the RF.

*Article 6:* The state is responsible for establishing and maintaining minimum conditions for the safety, freedom, prosperity, and well-being of all its citizens. Citizens are protected from neglect of these responsibilities by their sovereign control of their government. Final judgement as to how well the state has fulfilled its responsibilities is rendered by voters.

## **II: RIGHTS AGAINST THE STATE**

*Article 7:* Every person has a right to equality before the law and equal protection by the law regardless of race, sex, creed, nationality, ancestry, social origin, condition of birth, marital role, language, or culture.

*Article 8:* Every person has a right to the following general liberties:

- To state, publish, broadcast, and otherwise express or disseminate any thought, idea, or opinion. The state shall not censor any particular opinion or give the partisans of any particular opinion a monopoly over any medium of communication.
- To enjoy reasonable access to public acts, records, and proceedings.
- To petition domestic and international protectors of human rights on behalf of himself and other persons.
- To assemble and associate peacefully with other persons and to create and join political parties, labor unions, commercial enterprises, and other organizations.
- To worship as he pleases or not at all. No law shall establish, ban, favor, or denigrate any church or creed.

*Article 9:* Every person has the following rights of property, labor, and contract:

- To acquire, transfer, use, and bequeath property.
- Not to have his property taken for public use without just compensation and an order by an authorized court.
- To claim as his property those assets in which he has invested his labor and to which the law had established no prior claim.
- To make contracts and to demand the performance of contracts, including labor contracts and debt obligations.
- To strike, except when forbidden by law to prevent immediate threats to the public safety.
- Not to be bound in involuntary servitude to other persons or to the state.

*Article 10:* Every person has the following rights against the police and judicial powers of the state:

- To enjoy and defend his life, safety, freedom, and dignity. No lawful act shall take his life, except in defense of others or as punishment for murder. Nor shall any lawful act punish him in any way except as prescribed by law for a crime of which he has been duly convicted. And no lawful act shall subject him to physical or mental cruelty or to treatment that denigrates his dignity, including medical, military, and scientific experiments performed on him without his consent.
- Not to have his property, dwelling, records, or communications violated but according to an order by an authorized court upon probable cause that specifically describes the place or thing to be searched or seized.
- Not to be searched or detained unless he is caught committing a crime or an order for his detention has been issued by an authorized court according to law.
- Not to be detained for more than forty-eight hours without a finding by an authorized court that criminal proceedings are warranted and that he would likely flee justice or threaten public safety unless detained.
- To be judged without partiality in any criminal case. If accused of a crime, he has a right to a speedy, public trial by an impartial court and jury, to be informed of the accusation against him, to examine the witnesses and evidence against him, to have compulsory process to obtain witnesses and evidence in his favor, to be assisted by counsel without regard to means, not to bear witness against himself, his spouse, his children, or his parents, to be presumed innocent until proven guilty, not to be

convicted solely on the basis of his own confession or of evidence obtained in violation of this Constitution, and to appeal any conviction or sentence.

- Not to answer more than once for the same offense or to be held responsible for acts that did not clearly violate the law when committed. But if liability for any act is later reduced or eliminated, the new law shall apply.

*Article 11:* RF citizenship belongs to all persons who are RF citizens at the time this Constitution is adopted and to all persons born to at least one RF citizen or naturalized according to federal law. RF citizenship is equal, regardless of how it is acquired. Every citizen has the following rights:

- Not to be denied his citizenship.
- To travel freely within and across the borders of the RF.
- To vote if he has reached the age of eighteen. Every election shall be free, conducted by secret ballot, and open to all candidates who meet uniform requirements for listing on the ballot.

*Article 12:* No law shall deny or abridge any constitutional right. Laws that govern the manner and circumstances in which constitutional rights are exercised must be essential to the realization of those rights or to the fulfillment of some constitutional responsibilities of the state that cannot be fulfilled by less restrictive laws, and even then they must leave all persons with some ready and effective means of exercising all their constitutional rights. If challenged in court, the state shall bear the burden of proving that these conditions have been met.

### **III: RESPONSIBILITIES OF THE STATE TO THE CITIZEN**

*Article 13:* The state is responsible for these objects:

- Adequate income for all, including wage earners, retired persons, victims of repression, the disabled, and the unemployed.
- Adequate nutrition for all.
- Medical care for all.
- Housing for all.
- Primary, secondary, and vocational education for all, and higher education for all according to ability.
- Environmental and ecological safety.

- The safety and healthfulness of the workplace.
- Preservation of the natural and cultural heritage of the RF.
- Promotion of the arts and sciences.
- Development of industry and transportation.
- Promotion and efficient regulation of commerce.
- The widest possibility to enjoy gainful and satisfying employment, along with cultural, recreational, and leisure activities.
- Protection of ethnic, social, national, and religious minorities.
- Safety against crime.
- Compensation for damage done illegally to one's health, dignity, good name, or property.
- Protection of consumers against fraud, unsafe products, and anti-competitive practices.
- Protection of proprietary and contractual claims.
- Defense of the state and this Constitution.
- Democratic self-government in every Federal Subject.
- The ready means to petition the state for a redress of grievances.

The state shall not act but in pursuit of these objects.

#### **IV: FEDERAL STRUCTURE**

*Article 14:* A modification of the international borders of any Federal Subject requires the consent of its government and of the Senate of the RF. Only a treaty between federal subjects shall modify a shared border or create or modify a shared agency of government. Any state recognizing this Constitution may be admitted to the RF by federal law upon its request.

*Article 15:* Neither the RF nor any Federal Subject shall tax or hinder trade between Federal Subjects.

*Article 16:* Public acts of Federal Subjects that do not contradict this Constitution shall be respected in the entire territory of the RF.

*Article 17:* The following constitute the exclusive jurisdiction of the RF:

- management of federal state property;
- the federal executive agencies, civil service, armed forces, and courts;

- the federal budget, including taxation, appropriations, and borrowing;
- the legal foundations of a single market throughout the RF, including financial, monetary, credit, banking, and customs rules;
- international and inter-regional post, transport, and communications, including all matters of air, space, and maritime jurisdiction;
- copyrights and patents;
- production and use of weapons, fissionable materials, and toxic chemicals;
- uniform standards and measures and the national census;
- punishment and pardons for federal crimes;
- policing of RF borders and points of entry;
- immigration and naturalization;
- international relations of the RF;
- peace and security of the RF;
- federal awards, honors, and symbols.

The RF may delegate any part of its authority to its Federal Subjects, but in any exclusive jurisdiction of the RF, Federal Subjects have no authority without such delegation.

*Article 18:* Responsibilities of the state to its citizens that are not the exclusive jurisdiction of the RF are shared by the RF and its Federal Subjects. The RF may fulfil its responsibilities by providing funds and other resources to the Federal Subjects and by enacting general policies whose details and administration shall be the responsibility of the Federal Subjects. Federal Subjects that have adopted their own democratic constitutions are fully self-governing when and insofar as this Constitution and the laws of the RF are silent.

## **V: LEGISLATIVE BRANCH**

*Article 19:* The power to enact laws within the jurisdiction of the RF is vested in the RF Parliament, which consists of the Duma and Senate. Its deputies are directly elected by the people they represent on the second Sunday of May of those years in which their terms begin, or on the second and fourth Sundays in case two votes be required. They meet and take office on the fourth Monday of June following their election.

*Article 20:* The Senate consists of one deputy from each Federal Subject, elected for six years. The Duma consists of four hundred deputies, elected for three years and apportioned among Federal Subjects according to population. The exact method of apportionment is determined



by federal law, but every Federal Subject shall have at least one deputy. Each Federal Subject determines the procedures for electing its deputies to Parliament and filling vacancies if it has adopted its own democratic constitution. Otherwise, federal law determines these procedures.

*Article 21:* A deputy to Parliament shall be an RF citizen who has reached the age of twenty-one, resides in the Federal Subject or electoral constituency he represents, holds no other public post, and is not under criminal sentence. Each chamber shall judge the legal qualifications of its members, but a negative judgement may be appealed to the Constitutional Court of the RF.

*Article 22:* Each chamber of Parliament adopts its own rules of organization and procedure and elects a Chairman. Unless otherwise required by this Constitution, decisions of each chamber are by a majority of members present and voting, provided that a majority of all members are present. Attendance in a chamber may be compelled by its Chairman or the President of the RF.

*Article 23:* Upon approval by the Senate and Duma, a draft law consistent with this Constitution and signed by the President of the RF shall become law. The President may return the draft law, or any part that appropriates public funds, with his remarks to Parliament within fourteen days of its submission to him. If the draft law or part is subsequently approved by two-thirds of the members of each chamber, it shall become law. In case the President does not sign or return the draft law within fourteen days of its submission to him, it shall become law. All federal laws shall be officially published. Treaties, declarations of war, and their rescission are laws that must be initiated by the President.

*Article 24:* The Duma may impeach any official of the RF for grave violations of the law. Upon a finding by the RF Constitutional Court that the actions of which that official is accused constitute an impeachable offense, the Senate shall try the impeachment. Conviction requires a vote of two-thirds of its members. The sole penalty is removal from office, but the person convicted remains liable for his acts under the normal processes of law.

*Article 25:* Deputies are not legally liable for their votes or speeches in Parliament. Except in cases of a felony, deputies are immune from arrest and detainment and from search of their

persons, communications, documents, means of transportation, and places of work and residence.

## VI: EXECUTIVE BRANCH

*Article 26:* The President of the RF is the chief executive officer of the RF. He is elected for six years and may not be elected more than twice, or more than once after serving as President for more than three years of a term to which someone else was elected.

*Article 27:* Procedures for the conduct of Presidential elections shall be established by federal law. An election is held for President on the second Sunday of May in the year in which the President's term begins. A candidate is elected if he receives at least forty percent of all votes nationwide and more votes than any other candidate. Should no candidate meet this condition, a second election is held on the second following Sunday, but only the two candidates who had received the greatest numbers of votes in the first election, not counting those who have withdrawn their candidacy, shall appear on the ballot. Following his election, the President enters office on the second Sunday of June upon taking an oath prescribed by law.

*Article 28:* The President of the RF shall be an RF citizen who has reached the age of thirty-five, is not a citizen of any foreign state, holds no other public post, and is not under sentence for a major crime.

*Article 29:* Upon assuming office, the President shall appoint a Vice President, whose qualifications shall be the same as those for President. A Presidential candidate may have his Vice Presidential choice named on the official Presidential ballot. In case the office of Vice President be vacated, the President shall appoint a new Vice President with the consent of the Duma for the remainder of the President's term. The Vice President shall exercise those powers delegated to him by the President or by law. In case the office of President be vacated before the end of a Presidential term, the Vice President shall become President. In case both offices be vacated before the end of a Presidential term, the office of President shall devolve in turn upon the Chairman of the Duma, the Chairman of the Senate, and thereafter as determined by law. In each case, the new President must meet the qualifications for President, and he shall enter office upon taking the Presidential oath and shall serve for the remainder of the previous President's term.

*Article 30:* The President and Vice President enjoy the same immunity as deputies to Parliament. The powers of the President or Vice President may be terminated in the event of his persistent inability to exercise those powers for reasons of health as determined by votes of two-thirds of the members of the RF Constitutional Court and of the members of each chamber of Parliament.

*Article 31:* All ministries and inferior executive agencies and the duties of their officers are established by law. Those officers shall respond to questions by Parliament and provide Parliament with an accounting of expenditures according to procedures established by law.

*Article 32:* No executive officer of the RF shall hold any position in the legislative or judicial branch of the RF. No ministry responsible for any of the armed, police, or security forces of the RF shall be headed by an officer serving in any of those forces, and no merger of those forces is permitted.

*Article 33:* In addition to the powers granted him elsewhere in this Constitution, the President has the following powers:

- to issue directives for the execution of federal laws;
- to initiate draft laws to be acted on by Parliament before any other draft laws are considered, and to require that some or all of them not be subject to amendment;
- to appoint, with the consent of the Senate, ministers and other executive officers of the RF, diplomatic representatives of the RF, officers of the armed, police, and security forces of the RF, the Chairman of the RF Constitutional Court, and all other federal judges. But the law may vest appointment of inferior officials other than judges in superior officials or in the Federal Subjects;
- to accept the resignation of any RF executive officer and, with the exception of the Vice President, to dismiss any RF executive officer whom he or a predecessor has appointed;
- to serve as Commander-in-Chief of the armed forces of the RF;
- to conduct international negotiations, sign treaties, receive foreign representatives, and accredit RF representatives to other states and international organizations;
- to grant asylum;
- to grant pardons for federal crimes.

The President also has those powers assigned him by federal law.

*Article 34:* In the event of a grave and immediate threat to the public safety or to this Constitution, the President may assume the direct administration of government in the effected area. In the event of a grave and immediate threat to the security of the RF or to international peace, the President may deploy armed forces of the RF inside or outside the borders of the RF. Unless previously authorized by law, any such action may be rescinded or limited by Parliament thirty days or more after its initiation.

*Article 35:* The President shall report annually to Parliament on the conditions of the Federation. He shall also, in a manner and at a time established by federal law, recommend a comprehensive budget to Parliament.

#### **VII: JUDICIAL BRANCH**

*Article 36:* The judicial power of the RF resides in a Constitutional Court of the RF, comprising a Chairman and twelve other judges, and in other courts established by federal law, but the establishment of extraordinary courts is prohibited.

*Article 37:* Every federal judge shall be an RF citizen who holds no other public post and is not under sentence for a major crime. Every judge of the Constitutional Court shall have reached the age of thirty-five.

*Article 38:* Judges of the RF Constitutional Court enjoy the same immunity as deputies to Parliament. They are appointed for life. All other federal judges are appointed for life or until an age of retirement established by law. Federal judges may, according to procedures established by law, be removed from office owing to their persistent inability to perform their duties for reasons of health, but the removal of a member of the Constitutional Court requires the concurrence of ten other members.

*Article 39:* The Constitutional Court has the power to decide the Constitutionality of all public acts within the territory of the RF, to resolve disputes over the validity of federal elections, and to resolve jurisdictional disputes between organs of government within the territory of the RF.

*Article 40:* A petition for a ruling on Constitutionality may be addressed to the Constitutional Court by any organ of state and by any citizen claiming a violation of his Constitutional

rights. A petition for a ruling on a jurisdictional or electoral dispute may be addressed to the Constitutional Court by any party to the dispute. In each case, the petitioner shall, in the judgement of the Court, have exhausted other reasonable remedies. Decisions of the Constitutional Court are not subject to appeal. Public acts found to be unconstitutional by the Constitutional Court do not have the force of law.

#### **VIII: AMENDMENTS**

*Article 41:* Amendments to this Constitution shall be proposed by a vote of two-thirds of all deputies to each chamber of Parliament. They shall become part of this constitution if approved by the legislatures of two-thirds of all Federal Subjects.

#### **IX: TRANSITION**

*Article 42:* Upon ratification of this Constitution, Articles 7 - 12 and 14 take effect immediately, but the officers and institutions of the RF at the time of ratification retain their authority until Parliament and the President take office under this Constitution. The time and conditions of their election shall be determined by law in accordance with this Constitution but shall be no later than eighteen months from the date of ratification.

*Article 43:* All debts and treaties of the RF entered into and not rescinded before the ratification of this Constitution remain valid.